



Federal Trade Commission
600 Pennsylvania Avenue NW
Washington, DC 20580

October 12, 2018

Re: Competition and Consumer Protection in the 21st Century hearings, Project Number P181201

The American Booksellers Association, the not-for-profit trade association of independent booksellers across the country, is pleased to submit these comments in connection with the Commission's first Hearing on Competition and Consumer Protection in the 21st Century.

We hereby respectfully submit comments on Topic 3:

The identification and measurement of market power and entry barriers, and the evaluation of collusive, exclusionary, or predatory conduct or conduct that violates the consumer protection statutes enforced by the FTC, in markets featuring "platform" businesses

For this particular topic, our comments will focus on Amazon, which has used its dominance in the platform business, as well as a number of other market channels, to force publishers to submit to their trade terms, and to also force many of its competitors to use its platform to reach the market. Its growth in all arenas have created barriers of entry for booksellers, only compounded by Amazon's platform power via its third-party marketplace.

Most importantly, Amazon is using its role as a platform and a retailer anticompetitively to secure greater dominance in the many markets in which it operates [<https://ilsr.org/ilsr-ftc-comments/>]. Its growth as a company was aided in part by avoiding its obligation to collect and remit sales tax until 2014, and its ongoing and well-publicized demands from states and local governments for tax subsidies to open offices, warehouses, and, more recently, its second headquarters. As the company has grown, and has used its increasing dominance to acquire companies in various markets -- including distribution, wholesale, and publishing -- it has also begun to secure government contracts. It is no surprise then that its platform has come to dominate the industry. But it is crucial that the commission understand that this is merely part of a larger issue.

Many experts may argue that, regardless of the means, Amazon's growth is good for the economy and job creation.

A 2016 report indicates otherwise.

The Civic Economics study, *Prime Numbers: Amazon and American Communities*, [<http://www.civiceconomics.com/primenumbers.html>] estimates that nationally, in 2016, Amazon and its third-party marketplace vendors sold \$133.1 billion worth of retail goods nationally. These transactions resulted in 44,000 displaced shops and 637,000 displaced retail jobs, as well as up to \$5 billion in uncollected sales tax.

There is a good case to be made that Amazon, by all legal standards, is a monopoly [<https://newrepublic.com/article/119769/amazons-monopoly-must-be-broken-radical-plan-tech-giant>]. According to the *Chicago Business Journal*, Amazon's platform captured nearly half of online retail spending in the U.S.

While Amazon's growth as a retailer, publisher, and distributor may appear to benefit consumers via lower prices, it has a serious and negative impact on free expression [<https://www.bookweb.org/news/new-america-event-focuses-amazon-book-monopoly>]. It has a chilling effect on the diversity of voices in the publishing industry, and, as the aforementioned Civic Economics statistics show, a severe financial impact on communities across the country. Amazon's recent foray into bricks-and-mortar retailing will only increase the retail giant's presence and with it, this negative impact on the diversity of books available.

Moreover, Amazon's vast growth in key facets of the book industry -- from book sales to publishing to distribution to, now, bricks-and-mortar retail -- has created barriers of entry to its smaller and mid-size competition. Amazon has achieved such considerable market power with such questionable business tactics that it is undermining the ecosystem of the entire book industry in a way that will be detrimental, especially to mid-list authors, new authors, and minority voices. Given Amazon's dominant market share, no publisher -- regardless of size -- can afford not to do business with them, whatever the cost.

In 2014, there was a well-publicized dispute regarding terms between Hachette and Amazon, where Amazon delayed shipments of some Hachette titles, as reported by the *New York Times* [<https://www.nytimes.com/2014/05/09/technology/hachette-says-amazon-is-delaying-delivery-of-some-books.html>]. Additionally, Amazon removed the buy buttons from Macmillan's titles in 2010 during an e-book pricing dispute, as reported by *Bookselling This Week* [<https://www.bookweb.org/news/indies-highlight-shelves-well-stocked-hachette-titles>].

Amazon has as large a market share in the entire book business as Standard Oil did in 1911 [<https://www.nytimes.com/2014/10/20/opinion/paul-krugman-amazons-monopsony-is-not-ok.html>], right before it was broken up into 34 companies as a result of an antitrust action brought by the federal government. Amazon now controls 75 percent of online sales of physical books, 65 percent of e-book sales, more than 40 percent of new book sales, and about 85 percent of self-published e-book authors.

Moreover, Amazon's business model is eerily similar to the A&P grocery store chain's model prior to 1949, when the U.S. Court of Appeals ruled that A&P violated antitrust laws. Like A&P, Amazon is not keeping prices artificially high. Indeed, it is keeping prices artificially low, and extending its reach into production and distribution. This spurs further growth for Amazon, while forcing smaller competitors to do business with it even as it simultaneously competes against them. In the process, Amazon has garnered great influence among policy makers in states and in the federal government, garnering tax subsidies that only increase its market advantage at the cost of tax revenue and millions of jobs.

In many ways, Amazon has avoided close review and antitrust challenges regarding its business practices because its key market channel, the Internet, is relatively new.

But with the technology now maturing, it is increasingly clear that what constituted a monopoly in 1911 and 1949 constitutes a monopoly today. Antitrust laws exist to protect consumers, their communities, and small businesses from the very business practices now being employed by Amazon.

Thank you for the opportunity to submit these comments following the Commission's first hearing on this crucial topic. We would be happy to contribute to the Commission's process as it moves forward and would welcome the opportunity to answer questions, provide additional information, or discuss these issues with the Commissioners and staff. You can reach me at david@bookweb.org or via phone at (914) 406-7562.

Sincerely,

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American Booksellers Association